

1 Q You're on the second page of exhibit 12,
2 sir. There's the first page.

3 A I beg your pardon.

4 Q It's late, and I apologize. That's one
5 reason I'm having trouble forming coherent
6 sentences. I hope that's one reason.

7 A You're forgiven, if I am. I'm on the
8 first page of 12.

9 Q The second entry there is "Adjustment to
10 Reflect Claims Pay Profile With Reasonable Economic
11 Basis," and it refers to footnotes 4 and 5.

12 Do you see that?

13 A I do see the reference.

14 Q Why don't we look at footnote 4 now,
15 please, sir? That's kind of a long footnote, 4 is.
16 Why don't you read it quietly to yourself, and let
17 me know when you've done it.

18 A Thank you. I've read this.

19 Q I assume, because you're not an economist
20 and you told me you don't think you know what the
21 question means, that you don't have an opinion on
22 whether the adjustments described in footnote 4 do
23 or do not have a reasonable economic basis; is that
24 correct?

25 A I don't understand your question.

1 Q Do you believe that any of the adjustments
2 described in footnote 4 were reasonable analytic
3 steps to take?

4 A I don't think I can answer this question
5 or, indeed, this line of questions because we were
6 not provided with the backup analyses of how these
7 assumptions were carried out in order to develop the
8 results in exhibit 12. We provided our materials.

9 We have not gotten the steps that NERA
10 carried out in order to conduct this set of
11 analyses, and without that, I feel it's
12 inappropriate for me to try and discuss the
13 reasonableness of steps that I have not seen
14 substantiated.

15 Q What backup materials do you think you
16 didn't get?

17 A The actual tables that executed these
18 assumptions in order to generate these results.

19 Q Do you know that there are tables as
20 opposed to simply doing multiplication?

21 A Of course. This was put on a computer. A
22 computer ran this. This was not done -- as smart as
23 Dr. Martin is, it wasn't done in her head. You're
24 asking me to comment on an analysis that I have not
25 had a chance to review, and I can't do that.

1 Q Have you ever asked for this before?

2 A We -- it's my understanding -- I don't
3 know whether or not it's been asked for.
4 Ordinarily, we provide our backup, our explanation.

5 We had exhibits that are attached to my
6 reports. NERA routinely doesn't do that. They
7 didn't provide it. When we ask for things from near
8 arcs we get obfuscation. So I don't know whether we
9 would have gotten it if we asked for it. I do not
10 have it. I cannot answer your question. It was not
11 provided on a voluntary basis certainly.

12 Q I move to strike the answer, except for
13 the statement "I cannot answer your question."

14 The next entry on the first page, it has
15 to do with an adjustment to settlement values. Do
16 you see that? It's the next to the last one, and it
17 refers to footnote 6 and 7. My question is, you see
18 that entry, sir?

19 A I'm sorry. I see the third -- fourth row
20 of data on Exhibit 12. I see the references to
21 footnote 6 and 7. I started to read footnote 6. Is
22 that what you want me to do?

23 Q That's fine. Why don't you now read
24 footnote 6. I'm going to ask you about footnote 6
25 separately from footnote 7.

1 A I've read 6 and 7.

2 Q Were you aware that GAF's share in the CCR
3 was in the process of being revised in 1994?

4 A I know that -- it's my understanding it
5 was changed. I'm not sure I know the precise date
6 when it was changed.

7 Q Do you know whether, in January of 1994,
8 it was recognized that it was likely to be changed
9 to 20 percent?

10 A I don't know how to answer that question.
11 I don't know by whom.

12 Q Do you know what the share of payments
13 under Georgine allocated to GAF was?

14 A I don't know that I recall that, no.

15 Q Do you know if that was 20 percent or not?

16 A At some point, I believe GAF's was reduced
17 to 20 percent. When it was, whether it was in
18 Georgine -- my understanding it was generally, but I
19 don't know the date when that occurred, and I don't
20 know what was the understanding of the members of
21 CCR as of January 1994 about that issue with regard
22 to tort. I don't know either way.

23 Q Footnote 6 has to do with applying a
24 particular share to mean resolution values in a
25 exhibit to the fairness hearing; is that correct?

1 A That's my --

2 Q That's the subject?

3 A That's my understanding of what footnote 6
4 is saying, yes.

5 Q Okay. You did not feel, based on your
6 prior testimony, that you wanted to use anything
7 from the Georgine fairness hearing in your analysis,
8 as I understand it; is that correct?

9 A I don't think I testified to that.

10 Q Well, maybe I should state this a little
11 more precisely and try to -- I was trying to save
12 some time. I assume you don't believe that this
13 step is a reasonable analytic step to take based on
14 some of your prior testimony; is that correct or
15 incorrect?

16 A You mean the 20 percent reduction step?
17 I'm not sure what "this" is.

18 Q What's done in footnote 6.

19 A I think there are a couple of things wrong
20 with it. Tell you what they are?

21 Q Why don't you tell me what you think is
22 wrong with it.

23 A I don't think the dollar values -- this is
24 not the appropriate way to calculate what GAF's
25 payment history has been. There's immediate data

1 available that contradicts this. That's what you'd
2 use. You wouldn't use some exhibit that you can't
3 verify the accuracy of. I don't know its base. So
4 that's the first step, the use of that exhibit as
5 the basis for the calculation is wholly
6 inappropriate.

7 Q What's wrong with using an exhibit that's
8 provided in court by the CCR?

9 A Because you don't know the validity of the
10 numbers. You don't know their derivation. I don't
11 know their derivation. Maybe Dr. Martin knows the
12 derivation and can spell that out with regard to the
13 data.

14 You have specific data about how much was
15 paid by this particular defendant in the database.
16 And so you have direct information why one would go
17 to this inferential step using questionable and,
18 really, unbacked-up data and make some adjustment to
19 it to get back down, and in any event, those
20 percentages differ from occupation to occupation.
21 So, you know, it doesn't reflect the actual
22 operation of CCR. It's an improper step. That's
23 one problem.

24 The other problem is the 20 percent
25 reduction isn't appropriate, because all the 20

1 percent reduction is is an offset for the change
2 that had already occurred in CCR, switching from the
3 policy of namings where previously every member of
4 the CCR had contributed to every claim, whether or
5 not they had been named, but beginning at the end of
6 1991 and the beginning of 1992, all members of CCR
7 only paid on those claims where they were named, and
8 that changed -- the effect of that change was to
9 increase the amount of obligation for GAF compared
10 to what it had to pay historically.

11 By reducing its payment percentage, which
12 apparently was anticipated, from roughly 28 to 20
13 percent, you're basically offsetting the impact of
14 GAF -- what GAF would have to contribute to CCR as a
15 whole. So if you want to take this 20 percent
16 reduction, you also need to model or take into
17 account the name/not name change. It's a half a
18 loaf.

19 Q Do you know whether this is a reasonable
20 analysis if you were asked to look at what would be
21 expected to happen if the Georgine settlement had
22 been approved?

23 A I don't have an opinion about that.

24 Q You notice that footnote 7 deals with age
25 multipliers? Do you see that?

1 A Yes.

2 Q If you were going to do an age adjustment,
3 recognizing that you've told us you don't think one
4 is appropriate here, would you agree or disagree
5 with this general approach?

6 A I'm sorry. Isn't that a kind of would you
7 stop beating your wife question? I wouldn't make
8 the age adjustment. So I don't think that any step
9 is appropriate. I can't -- I have not thought about
10 how I would do something that's an inappropriate
11 step to do here when it's demonstratively and
12 empirically incorrect. And furthermore, with regard
13 to both of these footnotes in this entry, I don't
14 have the underlying data that executed the analysis
15 that Dr. Martin reports in the table in exhibit 12.

16 It's likely that I may find other problems
17 with regard to this -- these steps and how it's
18 executed. So I would say that I don't know that my
19 comments here are exhaustive with regard to what's
20 problematic about this.

21 Q If you had the backup data, would you look
22 at that backup data and try to see if you had
23 additional problems with it?

24 A Yes. I almost certainly would do so.

25 Q Do you notice that -- going back to the

1 first page --

2 MR. FINCH: First page of what? 12?

3 MR. MILLER: Of the exhibit 12.

4 THE WITNESS: Yeah, the table, yes.

5 BY MR. MILLER:

6 Q Yes, the table. I didn't finish because
7 somebody handed me a note. The last step
8 is "Adjustment to Reflect a 10-year Horizon."

9 Do you see that?

10 A Yes.

11 Q You recognize that the Georgine settlement
12 had a 10-year horizon in it?

13 A No.

14 Q You didn't know that?

15 A I don't agree with the characterization.

16 Q It had 10 years before there was a
17 renegotiation point?

18 A It anticipated two 10-year periods with
19 some renegotiation. I think it was applicable over
20 two 10-year periods.

21 Q Have you looked at the CD-ROM that was
22 produced with Excel spreadsheets by the way as
23 backup to the NERA report?

24 A I don't know that we've gotten that.

25 Q Well, do you know whether you have or have

1 not gotten it as you sit here?

2 A I spoke with Dan Relles, who is the
3 statistician, and he said we have not gotten backup
4 material. If we have gotten it, we'll look at it.
5 If we haven't gotten it, I'd appreciate getting it.

6 Q As you sit here today, can you say under
7 oath that you did not receive a CD-ROM with Excel
8 spreadsheets that had the backup for exhibits on it?

9 A I can say under oath that I made inquiry
10 with Dan Relles who told me that we did not have the
11 backup information. Beyond that, I can't say. I
12 can't swear under oath for what Dr. Relles knows or
13 doesn't know. He's not under oath here.

14 Q I understand that. Did you ask Dr. Relles
15 about whether he had seen a CD-ROM that had Excel
16 spreadsheets on it?

17 A I didn't ask that specific question. I
18 asked him if he had the backup.

19 Q Do you know whether he did or did not,
20 from something he said, look at Excel spreadsheets
21 that were produced by Dr. Martin with regard to her
22 report?

23 A I didn't -- I don't believe we've gotten
24 anything like that. I'm quite certain we haven't.
25 And if Dr. Relles had it, he would have looked at

1 it.

2 MR. MILLER: How much time have we used on
3 the tape so far, please?

4 MR. FINCH: About 20 minutes, I think.

5 VIDEO OPERATOR: Left on the tape?

6 MR. MILLER: No, no, how much have we used
7 on the tape. I've talking about how much we've used
8 since the break is really my question.

9 VIDEO OPERATOR: Okay.

10 About 20 minutes we've used.

11 MR. FINCH: We've used or we have
12 remaining.

13 VIDEO OPERATOR: We have 40 minutes
14 remaining.

15 MR. MILLER: Let's go off the record just
16 a moment.

17 VIDEO OPERATOR: We're off the record.
18 The time is approximately 5:31 p.m.

19 (Recess.)

20 VIDEO OPERATOR: We are back on the
21 record. The time is approximately 5:38 p.m.

22 MR. MILLER: While we were off the record,
23 Mr. Finch made a proposal. Why don't you outline
24 that, sir.

25 MR. FINCH: Mr. Miller and I discussed the

1 proposal, and it is as follows. He will finish one
2 more topic here, and I will have a short redirect
3 based on the topics that have been covered today.

4 Then we will adjourn the deposition, which
5 can be reconvened, and Mr. Miller will have an hour
6 to question Dr. Peterson. The only stipulation
7 about that is that the deposition can be conducted
8 via telephone or video conference so we don't have
9 to fly everybody back to Washington or Texas or
10 something like that.

11 MR. MILLER: And we'd like to note that
12 one of the reasons for this proposal is there was a
13 CD-ROM produced, and some tracing is going to be
14 done to find out what happened to that CD-ROM.

15 MR. FINCH: Yes. Caplin & Drysdale
16 received a CD-ROM. We're tracing to figure out why
17 that was not sent to Dr. Peterson. We'll send it to
18 Dr. Peterson. I suggest we reconvene the next part
19 of the deposition a week or two hence after we can
20 get that to him. But let's just work on the
21 schedule after we get off the record and finish
22 today.

23 MR. MILLER: Also for the record, we
24 believe the Bates numbers on the CD-ROM are DMM
25 00014321. So we believe it has 14,321 Bates

bered pages on it.

MR. FINCH: 2000 of those pages are CCR
tlement agreements.

MR. MILLER: Perhaps.

BY MR. MILLER:

Q Dr. Peterson, I want to be sure the record
clear on one topic we talked about earlier today.

u have never had any financial interest in a
aintiffs' law firm that does asbestos work; is
hat correct?

A That's correct.

Q And you have never had any financial
articipation in any asbestos recoveries, obviously
etting aside hourly expert fees; is that true?

A That's correct.

Q Are you aware that the United States
attorney in Manhattan has subpoenaed some records
having to do with asbestos litigation?

A No.

Q Have you read the news reports on that?

A I don't recall.

Q Have you read news reports suggesting that
one of the things that the U.S. attorney is looking
into is expert witnesses in asbestos litigation who
may have had contingent fee arrangements that were

1 numbered pages on it.

2 MR. FINCH: 2000 of those pages are CCR
3 settlement agreements.

4 MR. MILLER: Perhaps.

5 BY MR. MILLER:

6 Q Dr. Peterson, I want to be sure the record
7 is clear on one topic we talked about earlier today.
8 You have never had any financial interest in a
9 plaintiffs' law firm that does asbestos work; is
10 that correct?

11 A That's correct.

12 Q And you have never had any financial
13 participation in any asbestos recoveries, obviously
14 setting aside hourly expert fees; is that true?

15 A That's correct.

16 Q Are you aware that the United States
17 attorney in Manhattan has subpoenaed some records
18 having to do with asbestos litigation?

19 A No.

20 Q Have you read the news reports on that?

21 A I don't recall.

22 Q Have you read news reports suggesting that
23 one of the things that the U.S. attorney is looking
24 into is expert witnesses in asbestos litigation who
25 may have had contingent fee arrangements that were

1 undisclosed?

2 A No, I'm not aware of that.

3 Q Just to be clear, on the record under
4 oath, you don't have any undisclosed contingency fee
5 arrangements related to asbestos matters; is that
6 true?

7 A That's true, although I've had a hard time
8 collecting some of my fees, but none of them are
9 intended to be or are contingent. They just turn
10 into bad debts sometimes.

11 MR. MILLER: That's the topic I wanted to
12 cover. Thank you.

13 THE WITNESS: Thank you.

14 MR. FINCH: I have a short redirect.

15 EXAMINATION

16 BY MR. FINCH:

17 Q Dr. Peterson, is it correct that none of
18 the fees you earn through your work as an expert or
19 consultant in asbestos litigation is contingent in
20 anyway upon the nature of your testimony or the
21 outcome of any particular case?

22 A That's correct.

23 Q Earlier today, you were asked some
24 questions by Mr. Miller about your testimony before
25 the Senate judiciary committee and your preparation

1 for same in connection with federal legislation that
2 would reform the way asbestos claims are processed
3 in the United States. Do you recall that testimony?

4 A Yes.

5 Q Did that testimony and the work that led
6 up to it constitute lobbying activity on your part?

7 A No. I don't regard it as lobbying. I was
8 doing technical analyses.

9 Q At whose -- who were the members of the
10 Senate judiciary committee or their staffers who
11 would have requested that you provide information to
12 them or testify before them in connection with
13 asbestos reform legislation?

14 A Both Democrats and Republicans asked me to
15 testify. Most of my analytic work has been
16 undertaken at the request of several different
17 people, first Senator Nickles when he was chairman
18 of the finance committee and on the judiciary
19 committee and his staffers, more recently Senator
20 Cornyn and his staffers, who is also on the Senate
21 judiciary committee.

22 I think I've been asked to do some
23 analyses by staffers for Mr. Durbin, Senator Durbin
24 and Senator Lahey, and there may have been others.
25 I was also asked to provide analyses, do some

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1 analyses and comments by the Congressional Budget
2 Office and by the GAO, I guess, and by the AFL-CIO.
3 All of them have asked me to either review analyses
4 or provided them with analyses dealing with the
5 kinds of matters I testified about. That was the
6 subject of my testimony in all instances.

7 MR. FINCH: That's all I have.

8 MR. MILLER: I will do one quick follow-up
9 on that last redirect.

10 EXAMINATION

11 BY MR. MILLER:

12 Q Were you compensated for these analyses
13 and comments that you were asked to provide by the
14 GAO and the AFL-CIO?

15 A No.

16 Q They were on your own time?

17 A I was not compensated by them. The work
18 that I've done, as I've described earlier, it's
19 billed in the same manner.

20 Q And it was billed to a combination of
21 asbestos trusts and asbestos claimants' committees;
22 is that my understanding?

23 A Yes.

24 MR. MILLER: Thank you. We'll reserve,
25 just for the record, we made an arrangement, we're

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1 going to have another hour. We'll do it by
2 telephone or by video. We'll try to exchange
3 documents and make it productive.

4 MR. FINCH: Okay.

5 VIDEO OPERATOR: We're off the record.
6 The time is approximately 5:45 p.m. This concludes
7 the deposition of Mr. Mark Peterson.

8 (Whereupon, at 5:45 p.m., the deposition
9 was adjourned, to be reconvened at a later date.)
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1 I HEREBY CERTIFY that I have read this
2 transcript of my deposition and that this transcript
3 accurately states the testimony given by me, with
4 the changes or corrections, if any, as noted.
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7 X
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11 Subscribed and sworn to before me this day of
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My commission expires:

C O N T E N T S

WITNESS

EXAMINATION

MARK A. PETERSON

By Mr. Miller

4, 256

By Mr. Finch

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MARKED QUESTION - Page 221, Line 6

E X H I B I T S

EXHIBIT NUMBER

IDENTIFIED

Exhibit 1

3

Exhibit 2

34

Exhibit 3

105

Exhibit 4

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Exhibit 5

116

Exhibit 6

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA EDGINGTON, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires: NOVEMBER 1, 2007